G. R. S. IX-5]

Previous references.

Reserve

1918-19

(do)

File No. 30-18

Serial Nos. 1-3

Later references.

Legis 7-19 (19, 28, 30)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-3

Part B for January 1919

SUBJECT.

Amendment of the provisions under order 38, Rule 12 of the Civil Proc: Code (Cancelling the grant of injunction applications) R. A. Subject to No 52 of 1917-18.

Sl 3) To, The Registrar, Chief Court. Lahore & Kadur & Lyallpur. No G. 13460-63 of 6-1-1919

States that Govt agree with the opinion of the Chief Court & consider that the rule may be left undisturbed.

W D 88—GPB—50,000—24-7-16

15/1/1919.

G. R. S. 11] 1918.

GENERAL AND REVENUE SECRETARIAT.

(Cash)

NOTES.

File No. 30/18

FILE HEADING.

Amendment of the provisions under order 38, Rule 12 of the civil Pro: Code (Cancelling the grant of injunction applications).
R. A: Subject no. 52 of 1917-18

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

DIARY NO. 9.1333.

19 -19

7253

SUBJECT NO. 52.

Amendment of the Civil Procedure Code.

Messrs. (1) N. Kallegowda and B. Rangarajiah, Mudgere taluk; (2) B. Narasinga Rao and Veene Rangaswami Iyengar, Seringapatam taluk.

GENERAL SECRETARIAT JUDICIAL 22 JUL 1918

Summary of discussion.—(1) The provisions contained under Order 38, Rule 12 of the Code of Civil Procedure cancelling the grant of injunction applications causes much inconvenience and loss to money-lenders. This provision may be omitted.

(2) Order 38, Rule 12 of the Civil Procedure Code may be amended so as not to apply for suits filed by a landlord against his tenants for the recovery of the gutta produce due by them.

Reply of Government.—Will be referred to the Rules Committee.

1) Subd. with a draft to the Registrar, Chief Court -

Issue
25

W.N. 24/7

24/7

2. To,
1 The Registrar chief Court
No G 2190 Dt 29.7.18
Calls for his opinion in the matter.

Issue A

2 From, The Registrar, Chief Court-
No. R.O.C 167/18-19 Dt 24/26-11-18
Forwards an extract from the precis of the opinion of the Rule Committee on the grant

3) Subd. for orders.

8/7
6/12

3) Draft in accordance with the views of the Chief Court may be put up

8/7

4) Draft subd.

8/7
9/12

General and Revenue Secretariat. | 45 File No. 30 of 1918.

Serial No.

5) Under Order XXXVIII Rule 12, the plaintiff can not ~~authorised to~~ apply for the attachment of any agricultural produce in the possession of an agriculturist, the Court is also not empowered to order the attachment or production of such produce. There are two prayers by the members of the R.A in regard to this rule. One is that the rule cause much inconvenience to money lenders it may be omitted, and the other is that it may be amended as not applying to suits by landlords against tenants.

6) In regard to the first request, the principle of exempting a portion of growing crops (Section 60(1)(f) of Civil Pro. Code) from attachment in execution of a decree, must apply equally in cases of attachment before judgment. ~~(Should~~ Analogy ~~barring~~ growing crop is not likely to abscond and cannot remove it except at maturity. Attachment of such crops was considered to be productive of hardship and so was not allowed. The law here on the subject is the same as that in British India. There does not appear to be any good ground for changing this wholesome provision based upon justice and equity.

7) As regards the second point, in British India if a landlord has a first-charge for the recovery of rent, then ~~here~~ Order 38 R 12 does not apply, by virtue of Sec. 73 (2). In the absence of

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-3-19—S.

G. R. S. III-2]

General and Revenue Secretariat. | C5 File No. 30 of 1918.

Serial No.

as per a local law here enforcing apprt. change in the landlord, the Section 4 (2) of the British Act was not introduced here. Hence the majority of the Rule Committee are in favour leaving the law as it is the chief Court agree in this, and this draft in accordance with their views is submitted for favour of approval.

2404/7/12/18.

Secy Member

Draft approved

Recd 18.12.18

Secy to Govt

3 The Registrar Chief Court
the Dy Commr Kadur and Mysore
C 13460-63 of 6-1-19
State that Govt agree with the opinion of the Chief Court and consider that the rule may be left undisturbed.
To the R. A Section.
C. 13463
Forwards copy of the above

10 JAN 1919

NOTE—Contn. sheet.

WD A 1789—GPB—60,000—20-3-19—S.

File No. Cont 30/8

Serial No. 1

Diary No. of letter replied to _____

No. G 2190

General and Revenue Secretariat

To The Registrar, Chief Court of Mysore

Date of issue 29.7.918

Signed by Mr E J Dyer

Sir,

I am directed to invite your attention to subject No. 52 of the Proceedings of the 2nd Session of the Representative Assembly of 19.1.7.1.8.....and the reply of Government thereto in the matter of omitting the provisions contained in ~~Rule~~ order 38 Rule 12 of the Code of Civil Procedure ~~refer the matter to the Rule~~ and to request you to ~~be so good as to favour~~ ~~Cons matter to favour~~ Govt. with the opinion of the Chief Court ~~your opinion~~ in the matter at an early date.

List of enclosures _____

Drafted by _____

Copied by _____

Examined by _____

I have, etc.,

For Secretary to Govt.

GPB—500—7-11-11

R.O.C.No. 167/1918-19.

Chief Court of Mysore,
Bangalore.
Dated 26th November 1918.

DIARY No. 97253

16128

From

S. KRISHNA RAO, Esquire, B.A., B.L.,
Registrar of the Chief Court of Mysore.

SECTION: Courts
FILE No. 30-18
SERIAL No. 2

To

C.S. BALASUNDARAM IYER, Esquire, B.A.,
Chief Secretary to the Government of Mysore,
Bangalore.

CHIEF SECRETARIAT PROTECTION 30 NOV 1918

S i r,

Adverting to your letter No. G. 2190/Cts. 30-18-1, dated the 29th July 1918, inviting the attention of this court to Subject No. 52 of the Proceedings of the second session of the Representative Assembly of 1917-18 and the reply of Government thereto in the matter of amending the provisions contained under Order 38, Rule 12, of the Code of Civil Procedure and calling for the views of the Rule Committee and the opinion of this court on the subject, I am directed to forward herewith an extract from the precis of the opinion of the Rule Committee on the question.

The proposal consists of two parts the first of which is in substance a total repeal of the Rule while the second part suggests an exception to the Rule so as to make it inapplicable to suits by landlords against their tenants for the recovery of the gutta in kind.

In

In respect of the first part of the proposal the Rule Committee are unanimous in their opinion against the repeal of the rule.

In regard to the second part of the proposal, the majority of the committee are in favour of leaving the rule as it stands without any alteration.

The Judges of the Chief Court agree with the views of the Rule Committee and are not in favour of altering the rule in any way. The proposal is based on the assertion that a tenant may make away with the crop on his land pending suit, and it is no doubt true that this may occasionally happen; but unless the landlord is suing to eject the tenant he still has the next year's crop which he can attach in execution in due course, at any rate so far as it is not exempted under section 61; while to attach the crop before judgment may deprive the tenant of the power of selling his crop to the best advantage at the proper time and may cause more hardship than it will prevent.

I have the honour to be,

Sir,

Your most obedient servant,

S. Krishnadas

REGISTRAR.

N.G.

Extract from the precis of the opinion of the Rule Committee.

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* * * * * *

The subject consists of two parts. The first of them which is not clearly worded as pointed by Mr. Plumer (now Mr. Justice Plumer) is in substance a proposal for a total repeal of the rule. The reason assigned for the proposal is that the operation of the rule causes much inconvenience and loss to money-lenders. The second part suggests an exception to the rule so as to make it inapplicable to suits by landlord against his tenants for the recovery of the gutta produce due by them.

Messrs. Plumer, B. Subbanna and Doraswami Iyer are not in favour of either annulling or amending the rule.

In support of his opinion, Mr. Plumer says that the difficulties in the way of effecting attachment before judgment of agricultural produce, and the doubtful and comparatively small benefit such a power of attachment would confer on the landlords in suits against their tenants for gutta, would render the repeal or amendment of the rule undesirable, while Mr. Subbanna also emphasises the trouble and loss resulting from the attachment and sale of ryots produce would be out of all proportion to the profit. Though he is inclined to grant that there is a 'point in favour of the landlord', thinks that cases calling for a special provision are so few and far between that no alteration of the law would be warranted.

Mr. C.S. Doraswami Iyer is not sure that the existence of the rule is causing any hardship. He thinks

that

that if there be real hardship, the rule may be modified so as to admit of the attachment before judgment of crops cut and gathered or their produce and to exempt the standing crops from such attachments.

But Mr. Balakrishna Rao is in favour of the proposed amendment and does not support the proposal of its annulment altogether. The amendment suggested by him is to insert the words "not being a lessor suing for the recovery of the rent due" between the words "plaintiff" and "to apply". He has supported his views in regard to the amendment on the ground that the rule as it stands affords scope and opportunity for a fraudulent tenant contesting his landlord's suit, to dispose of his produce before decree is granted against him and thus defeat his claim for rent. An additional reason given by him for amending the rule as suggested by him, which is that the landlord oftentimes gives the tenant seed grains and manure and even supplies him with labour for weeding and harvesting counting the crop practically as his own, and that he should therefore be treated differently from ordinary creditors in the rules prescribing the procedure for recovering their dues.

* * * * *

S. Krishnarao

REGISTRAR.

N.G.

G.R.S. VI-71]

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

Section 45

File No. 80-18

Serial No. 3

General and Revenue Secretariat

( )

Proceedings of the Government of His Highness the Maharaja of Mysore.

, the *191*

Date of issue..... 6.1.19.

Signed by.....

Read.—

Subject no 59 of the Proceedings of the Second session of the R.A of 1917-18 consisting of two suggestions taken in regard to Rule 12 of order 38 of the Code of Civil Procedure, the first being The repeal of the Rule as it causes much inconvenience and loss to money lenders and the second being the amendment of the

over.

May this be

i Printed?

ii treated as a standing order?

iii published in the Gazette English part?

iv translated?

v placed at the disposal of the press?

vi published in the Gazette Kannada part?

~~Order Thereon.~~ ~~No.~~

Rule in such a manner as not to apply to suits by a landlord against his tenants for the recovery of the rents Principle

2. Correspondence ending with letter No. R.O.C 167/1918-19 dt 26/29-11-1918 from the Registrar to the Chief Court of Mysore stating that in respect of the first part of the proposal, the Rule Committee are unanimous in their opinion against the repeal of the Rule, that in regard to the second part, the majority of the Committee are in favour of leaving the Rule as it stands and that the [illegible]

List of enclosures.

Copied by

Examined by

G. R. S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

The Chief Court agree with the views of the Rule committee on both the points and are not in favour of altering the Rule in any way.

Order No. 9136 of Govt. agree with the opinion of the Chief Court and consider that the Rule may be left as it stands without any alteration

Rec'd 15.12.18

GS for Chief Secy

To

Y. 9136 65. The Registrar, Chief Court

Dy Comnrs. of Kadur & Mysore for communication to the respective R. A. members.

Copy to the R. A. Section.